

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

KURTIS E. ARMANN,)	
)	Civil Action No. 04-118(E)
Petitioner,)	
)	
v.)	Judge Sean J. McLaughlin
)	Magistrate Judge Susan Paradise Baxter
WARDEN, FCI McKEAN,)	
)	
Respondent.)	Filed electronically

**MOTION TO STAY EVIDENTIARY HEARING PENDING DISPOSITION
OF RESPONDENT’S INTERLOCUTORY APPEAL
TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

AND NOW, comes Respondent, Helen J. Marberry,¹ Warden, FCI McKean (“Respondent”), by her attorneys, Mary Beth Buchanan, United States Attorney for the Western District of Pennsylvania, and Christy Wiegand, Assistant U.S. Attorney for said district, and respectfully requests the Court to stay the evidentiary hearing granted by the Court’s Order of May 31, 2007. As grounds for this Motion, Respondent states the following:

1. On December 29, 2005, Petitioner Kurtis Armann (“Petitioner”) moved this Court to grant an evidentiary hearing on the issue of his competency to stand trial at a military court-martial which occurred over eight (8) years ago in March, 1999. Respondent opposed Petitioner’s Motion for Evidentiary Hearing, arguing that because the military courts gave full and fair consideration to the issues raised in the habeas Petition, including the issue of Petitioner’s competency, Petitioner was

¹ Helen J. Marberry has replaced James Sherman as Warden of FCI McKean, and pursuant to Fed.R.Civ.P. 25(d)(1), is automatically substituted for Mr. Sherman as Respondent in this matter.

not entitled to an evidentiary hearing in this matter, and that further review by this federal civilian court was precluded as a matter of law.

2. On September 15, 2006, Magistrate Baxter issued an Order scheduling an evidentiary hearing to take place in this matter on October 17, 2006. On September 28, 2006, Respondent filed and served a Notice of Appeal of the Magistrate Judge's September 15, 2006 Order.

3. On May 31, 2007, Judge McLaughlin issued an Order adopting the September 15, 2006 decision of Magistrate Judge Baxter granting an evidentiary hearing.

4. Simultaneously with the instant motion, Respondent is, by separate motion, requesting this Court to certify for immediate interlocutory appeal its May 31, 2007 Memorandum Opinion and Order.

5. Respondent respectfully requests that the Court issue an order staying the evidentiary hearing on the issue of Petitioner's competency pending disposition of Respondent's interlocutory appeal to the United States Court of Appeals for the Third Circuit. Preparation for an evidentiary hearing would involve extensive review and analysis by Respondent's counsel and expert of all of Petitioner's supporting documentation, including Petitioner's medical records and Petitioner's expert's report. If the United States Court of Appeals for the Third Circuit were to agree with Respondent that the military courts gave full and fair consideration to this issues raised in Petitioner's habeas Petition, including the issue of Petitioner's mental competency, a stay of the evidentiary hearing at this point in time would prevent Respondent from unnecessarily incurring expenses for hearing preparation.

6. Moreover, Respondent respectfully requests, in the event the Third Circuit affirms this Court's May 31, 2007 Order, that prior to the evidentiary hearing, the Court hold a case

management conference to address any issues regarding either the scope of the hearing or what law will apply at the hearing. Furthermore, Respondent requests that, prior to the hearing, the Court grant the parties a sixty (60) day discovery period, to permit Respondent to obtain any necessary medical or expert information.

7. Respondent further respectfully requests that any hearing not take place until at least thirty (30) days following the close of the discovery period.

8. WHEREFORE, Respondent respectfully requests that the Court grant this Motion, and stay the evidentiary hearing pending disposition of Respondent's interlocutory appeal to the United States Court of Appeals for the Third Circuit. Respondent further requests that, should its appeal be denied, the parties be permitted a sixty (60) day discovery period, with the hearing to take place no earlier than thirty (30) days following the close of the discovery period. Moreover, Respondent respectfully requests that, should its appeal be denied, the Court hold a case management conference to address any issues as to the scope of the hearing and what law will apply.

A proposed Order is attached.

Respectfully submitted,

MARY BETH BUCHANAN
United States Attorney

s/ Christy Wiegand
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Counsel for Respondent

CERTIFICATE OF SERVICE

I hereby certify that I have served this date a copy of the within *Motion to Stay Evidentiary Hearing Pending Disposition of Respondent's Interlocutory Appeal to the United States Court of Appeals for the Third Circuit*, by mail or electronic filing, upon the following:

Thomas W. Patton
Federal Public Defender's Office
1001 State Street
1111 Renaissance Centre
Erie, PA 16501

s/ Christy Wiegand
CHRISTY WIEGAND
Assistant United States Attorney

Date: June 13, 2007